IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2116 OF 2006

Mr. Abdule Razzak Umar Balbale ..Petitioner

Vs.

Abhyudayta Co-Op. Bank Ltd. and Ors. ..Respondents

Mr. S.V. Marwadi for petitioner.
Mr. D.P. Adsule, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : October 10, 2007.

P.C.:

1. Heard Mr. Marwadi the learned counsel for the applicant who is the complainant in Criminal Case No. 80 of 2006. By his order dated 10/2/2006 the learned 7th Joint JMFC, Court No.1 at Thane declined to order investigation under Section 156(3) of Cr.P.C. and, therefore, the complainant approached the Sessions Court at Thane in Criminal Revision Application No.42 of 2006 which was also dismissed by the In-charge Additional Sessions Judge at Thane on 11/5/2006. Hence this petition under Article 227 of the

Constitution read with Section 482 of Cr.P.C.

2. Admittedly, the recovery proceedings were initiated against the petitioner and the subject property mortgaged against loan was sought to be sold in execution of the decree for recovery of the loan amounts. As per the complainant the sale transaction was fraudulent and the property was undervalued and given away for a sum. He, therefore, claims that there is a triable case made out for the offences under Sections 406 and 420 of IPC.

3. The Senior Manager of the respondent no.1-Bank has filed affidavit-in-reply and he has specifically pointed out that the auction had taken place 11/6/2004 and the highest offer received was intimated to all the parties concerned on 12/6/2004. He has also pointed out that vide letter dated 11/5/2005 Reserve price was communicated by the Special Recovery Officer (SRO) to all the concerned and all the parties were called upon to remain present at the time of auction. M/s. Mumbra Steel Treat Pvt. Ltd. through their Advocate had objected vide letter dated 17/6/2004 to

the sale of the property and accordingly the SRO granted hearing to M/s. Mumbra Steel Treat Pvt. Ltd. on 27/7/2004 and through their Advocate written arguments were filed. There was a letter received from M/s.Toss Automation Systems Pvt. Ltd. addressed to the petitioner showing the interest to purchase the property for a price between Rs.50 to Rs.60 lacs. Inspection of the property was allowed by the SRO to respondent no.1 and also to the intending buyer and the earlier auction was set aside by the SRO. However, the petitioner and other like M/s. Mumbra Steel Treat Pvt. Ltd. failed to bring any buyer for the said property, the property was once again put to auction vide paper publication on 7/9/2004 by the SRO. The SRO heard all the parties and as per his letter dated 16/11/2004 called upon the parties concerned, more particularly the owners to bring any buyer for the property for price more than auction price. There was no response and hence the SRO confirmed the sale of the property and issued certificate of sale on 17/2/2005. The sale has been registered with the Sub Registrar, Thane Thane on 17/2/2005. The affidavit further states that the petitioner himself was the

defaulter and inspite of giving adequate opportunity, he could not bring any buyer who was willing to pay the price more than the highest price received in the first auction.

4. On these obtaining circumstances, I have no doubt in my mind that both the courts below were right in turning down the prayer for investigation under Section 156 (3) of Cr.P.C.

5. Hence, the petition is rejected.

(B.H. Marlapalle,J.)